

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FREDERICK RANDOLPH,

Plaintiff,

vs.

NEW TOP, INC., LUCASINI CLASSICS,
INC. and DON JONATHAN CRAVATS,
INC.

Defendants.

Civil Action No.: 08 CV 4598 (RJS)

**ANSWER TO COUNTERCLAIMS
OF COUNTERCLAIM PLAINTIFF
NEW TOP, INC.**

For his answer to the counterclaims of defendant and counterclaim plaintiff New Top, Inc. ("New Top"), plaintiff and counterclaim defendant Frederick Randolph, responds as follows:

1. Admits, upon information and belief, the allegations in paragraph 1.
2. Admits the allegations in paragraph 2.
3. Neither admits nor denies the allegations in paragraph 3, which state legal conclusions to which no response is required.
4. Neither admits nor denies the allegations in paragraph 4, which state legal conclusions to which no response is required.
5. Admits that New Top purports to state the claims cited in paragraph 5.
6. Admits that New Top purports to state the claims cited in paragraph 6.
7. Neither admits nor denies the allegations in paragraph 7, which state legal conclusions to which no response is required.
8. Denies the allegations in paragraph 8, except to the extent they state legal conclusions to which no response is required.

9. Repeats his responses to paragraphs 1 through 8 as if fully set forth herein.

10. Neither admits nor denies the allegations in paragraph 10, which state legal conclusions to which no response is required.

11. Neither admits nor denies the allegations in paragraph 11, which state legal conclusions to which no response is required.

12. Admits that New Top purports to state the claims cited in paragraph 12.

13. Admits that New Top purports to state the claims cited in paragraph 13.

14. Neither admits nor denies the allegation in paragraph 14, which state legal conclusions to which no response is required.

15. Denies the allegations in paragraph 15, except to the extent they state legal conclusions to which no response is required.

FIRST AFFIRMATIVE DEFENSE

New Top has infringed the '289 and '429 Patents by making, using, offering to sell or selling the accused products.

SECOND AFFIRMATIVE DEFENSE

New Top's counterclaims fail to state a claim on which relief can be granted.

WHEREFORE Plaintiff and Counterclaim Defendant Frederick Randolph seeks an order of this Court dismissing New Top's counterclaims in their entirety, awarding Mr. Randolph his attorneys' fees and costs incurred in this action and awarding him such other relief as the Court deems just and proper.

Dated: New York, New York
August 12, 2008

Charles von Simson / s

Stephen M. Chin (SC 8094)
Charles von Simson (CV 1038)
von Simson & Chin LLP
62 William Street, Sixth Floor
New York, New York 10005
Telephone: (212) 514-8645
Facsimile: (212) 514-8648

Attorneys for Plaintiff Frederick Randolph